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## GENERAL COUNSEL'S OPINION NUMBER 57-4, DATED 16 OCTOBER 1957

- (a) Claim for excess baggage allowance shipped by air freight may properly be disallowed by Finance Division when articles shipped are not shown to meet the regulatory definition of "baggage".
- (b) The Government may not be bound by the erroneous act of one of its agents even though acting with apparent authority.

## TO FINANCE DIVISION

1. We have your memorandum of 19 August 1957 forwarding a claim by Mr. D for the cost of shipping excess baggage in connection with a TDY assignment. Because Mr. D's presentation to us of his claim raised several questions not of a purely legal nature we have answered him separately, with the thought that the perhaps more technical exposition below would be less suited to his purposes and more suited to yours, including distribution outside of your own office.

2. The existing facts of this case appear to be these: Mr. D was assigned TDY to a succession of overseas posts, the last of which was [ ] 25X1A  
The travel order authorized return travel from [ ] Mr. D. 25X1A  
wished to take annual leave in [ ] The travel order authorized 100 25X1A  
pounds unaccompanied air freight. Mr. D. had no air freight expense before  
his arrival [ ] and the freight in question was obtained there. Re-  
imbursement for the cost of transporting this freight from [ ] was 25X1A  
approved by the Certifying Officer, but exception was taken by the Finance  
Division on the grounds of want of authority.

3. This travel was performed [ ] dated 26 October 1954, 25X1A  
now replaced. Paragraph 3c states "up to 100 pounds of excess baggage  
allowance may be shipped by air express or air freight . . . ." Paragraph  
2a states "baggage is that public property, or private property to be used  
exclusively for official business, wearing apparel needed by the traveler for  
the journey, and such official and personal articles as may be needed for  
immediate use at destination."

4. The items making up the air freight in question were purchased  
after the traveler departed his last post of temporary duty; there is no  
indication or evidence that the freight in question otherwise met the  
requirements of the definitions quoted above. This being so, the expenditure  
is not reimbursable, the air freight authorized by the travel order being  
limited to baggage meeting those definitions.

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JOB NO. [ ] BOX NO. [ ] FILE NO. [ ] ~~SECRET~~ NO. 14 NO CHANGE  
IN CLASS/ DECLASS/ CLASS CHANGED TO: IS S. [ ] JUST. 22  
NEXT REV DATE 89 21079 12/1/78 30  
NO. PGS 3 CREATION DATE [ ] ORG COMP 36 OF 38  
REV CLASS C REV COORD. [ ] AUTH. IN 734

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5. A second question is raised by this claim. The use of air freight for other than authorized items is difficult to detect, so that, in the past, the Finance Division has taken few, if any, exceptions to claims based on such use. This practice may have caused a common impression that such claims are allowable. In addition, officers, presumably well informed and in a position of authority, may advise employees that this is so. The question is, do these factors have any effect on the validity of the claim?

6. Generally, in private business dealings, one who clothes his agent with the appearance of authority to act in a certain sphere is estopped to deny the regularity of the authority to a third person who has relied on it to his detriment. When this occurs, the principal may be bound by the act of his agent performed within this ostensible authority but outside of the real authority delegated to him. The philosophy behind this is that where the principal caused the unauthorized act of his agent to appear authorized it is more fair for him to bear the resultant loss than an innocent third party who relied on things as they seemed.

7. This doctrine does not apply when the Government acts through its agents because the public at large would have to bear the cost of mistakes made by its officers in excess of the authority which they derive from the public through its representatives, the Congress. It is thought that the public interest outweighs that of the private individual. We stated in the published General Counsel's Opinion Number 55-6, dated 15 February 1955, on page 7:

"Generally stated, the nature of public moneys requires authority of law prior to an expenditure of public funds . . . . As you are aware, we have frequently stated that the Government is not bound or estopped by the erroneous payments made by its officers, with or without jurisdiction, and whether made under mistake of fact, or of law."

The discussion which follows in that paragraph (paragraph 3 of Argument IV) is of interest in connection with the present case.

8. The law as stated above is supported by numerous court opinions, from one of which, that of the Supreme Court in the case of Federal Crop Insurance Corporation v. Merrill. 332 US 380, 92 L. Ed. 10 (1947), we quote:

"Whatever the form in which the Government functions, anyone entering into an arrangement with the Government takes the risk

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of having accurately ascertained that he who purports to act for the Government stays within the bounds of his authority. The scope of this authority may be explicitly defined by Congress or be limited by delegated legislation, properly exercised through the rule-making power. And this is so even though, as here, the agent himself may have been unaware of the limitations upon his authority.

"... the ... Regulations were binding on all who sought to come within the ... Act, regardless of actual knowledge of what is in the Regulations or of the hardship resulting from innocent ignorance. The oft-quoted observation in Rock Island, A. & L. R. Co. v. United States, 254 US 141, 143, 65 L. Ed. 188, 189, 41 S. Ct. 55, that 'Men must turn square corners when they deal with the Government', does not reflect a callous outlook. It merely expresses the duty of all courts to observe the conditions defined by Congress for charging the public treasury."

9. It will be clear from the above that the payment of any claim against the Government must be supported by authority from the legislature. In the absence of such authority, equitable arguments, such as reliance on a previous course of dealing or on misleading statements of officers, can have no effect. As we advised the claimant in this case, "The responsible official presumably gives the best guidance he can as to what the Government can reimburse and what it will not, but he cannot create such authority where there is none, nor can reliance on his mistaken assurances justify an unauthorized payment."

10. We see from this how important it is that administrative personnel be well informed in their fields so that employees will not suffer economically from poor guidance. By the same token each employee must realize that Agency officers can only grant that which they have authority to grant and there is always some risk that someone may misstate that authority.

11. We cannot tell whether the claimant here was misled by anyone with even apparent authority, but for the reasons given in paragraph 9 above such a finding is not necessary to our decision. An administrative determination was made that the freight in question was something other than that authorized by regulation to be transported at Government expense. In our opinion, for the reasons stated in paragraphs 4 and 9 above, the Fiscal Division correctly applied the law to that determination and properly disallowed the claim. 25X1A

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General Counsel~~SECRET~~